SUPREME COURT, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-353

A. L. ABBOTT, et al., *Petitioners*

vs.

THE UNITED STATES, *Respondent*

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF CLAIMS

Brief of the National Association of Retired Federal Employees, Amicus Curiae, in Support of Petitioner

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The National Association of Retired Federal Employees appears *amicus curiae*, with consent of all parties, in support of petitioner.

INTEREST OF AMICUS CURIAE

The National Association of Retired Federal Employees, hereinafter referred to as NARFE, was organized in 1921, and incorporated as a non-profit corporation under the laws of the District

of Columbia in 1947. Its membership is restricted to retired civilian officers and employees of the United States, and of the Government of the District of Columbia, and their spouses; present officers and employees who have reached the age of voluntary retirement, and survivors and dependents of former officers and employees who are receiving survivor annuities. It has more than 175,000 members, scattered throughout the United States and in foreign countries. There are about 1,000 local Chapters and 46 State Federations. Among the objects and purposes set forth in its Articles of Incorporation are:

"(a) To sponsor and support legislation, rules and regulations beneficial to annuitants and potential annuitants of the civilian public service.

"(b) To oppose legislation, rules and regulations inimical to the interests of annuitants and potential annuitants.

"(c) To promote the general welfare of annuitants and potential annuitants to the civilian public service.

"(d) To serve and advise retired officers and employees with respect to their rights under retirement law.

"(e) To cooperate with other organizations and associations in furtherance of the general objectives of this corporation."

Additional goals declared in the Preamble to the Association's By-Laws are as follows:

"The Association is deeply concerned in the problems, welfare, and status of all of the aged and aging in our Nation. Foremost among these are health, medical research and treatment, and hospital and dental care; in the area of social gerontology are economic security, gainful occupation, housing, recreation, spiritual welfare, civic and philanthropic interest, education, and kindred matters, which stimulate their lives and utilize their tal-

ents and experience as a potent segment of our population. It is the duty of the Association to align itself with public agencies, private organizations, and individuals devoted to leadership in these aims."

Since this case involves questions relating to the economic well-being of persons receiving retirement annuities based on active duty service to the United States, NARFE is constrained to offer its support, despite the fact that the service involved here is of a military nature, while the services which constitute the basis for annuities received by the members of NARFE were of a civilian character. There is also the further fact that some members of NARFE are directly interested in the case as the result of combined military and civilian careers in the public service.

SUMMARY OF FACTS

Petitioners are former members of military services of the United States who retired at a time when laws governing their retirement benefits were substantially the same as they had been throughout their active duty careers. Such laws provided that retirement benefits be based on a fixed percentage of active duty pay for the same rank and grade from which retired, and that whenever active duty pay rates were raised or lowered, the benefits of retired persons would be raised or lowered on the same percentage basis. After their retirement, Congress changed the laws governing their retirement benefits, eliminating any possibility of reducing such benefits, and providing periodic percentage increases to match increases in the cost of living as reflected on a national basis in the Consumer Price Index. This change introduced into the military retirement system a cost-of-living escalator plan previously added to the Civil Service Retirement System, under which there had never been any provision whereby retirement annuities could be reduced. It should be noted that during

the depression years of the 30's when there were reductions in compensation for active duty civilian employees and members of the military services, there were corresponding reductions of retirement benefits for those retired from the military services but no reductions in retirement benefits of retired civil employees.

During recent years active duty compensation, both military and civilian, has increased at a much higher rate than the cost of living as measured by the Consumer Price Index, and the retirement benefits of the petitioners are not as great as they would have been under the laws in effect at the time of their retirement. For this reason the petitioners seek a determination by the Court that the change in the laws after their retirement operated to deprive them of property rights without due process of law.

SUMMARY OF ISSUES

Although presented in the form of five questions, the main issue presented in the petition is whether a person retired from a military service has a vested right to an annuity computed on the basis of laws that had been in effect throughout his active duty period and had continued unchanged through his retirement date, and the related issue as to whether such vested right is a property right which cannot be taken away without due process of law.

ARGUMENT

Annuities under the Civil Service Retirement System, and retirement benefits under military retirement laws, are vested rights to the extent that the active duty performance on which such benefits are based has been completed and the full faith and credit of the United States is pledged to the payment of such benefits. They are vested rights also of such a character that the United States is committed to make adjustments as necessary to compensate for loss of buying power due to inflation which re-

tired persons and other annuitants and beneficiaries are powerless to avoid.

On the other hand, the term "vested" is sometimes used to connote "fixed" as implying not subject to change, or "frozen." This concept of vested rights to annuities could be a severe blow to annuitants under the Civil Service Retirement System where many retired employees and their survivors are receiving substantially higher benefits than those provided under laws in effect when active duty service was being performed, and on the date of retirement.

Our concept of vested rights to benefits under retirement systems should be that those receiving retirement benefits based on former service should receive all that is equitable in the public interest. This concept will maintain morale and confidence among those in active duty who are looking forward to retirement, preserve the security of those dependent upon such benefits and inspire the respect of citizens generally.

CONCLUSION

We recommend that petitioners' writ of certiorari be granted, in order that a proper review may be given to the issues presented.

Respectfully submitted,

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